BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2022**

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**
**AND**
**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**C.M.A(MD)No.1198 of 2018**

1.Tamilarasi

2.Minor Madhubalan
represented by Guardian mother Tamilarasi

3.Minor Jothiprakash
represented by Guardian mother Tamilarasi
... Appellant/Claimants

.vs.

1.Dr.V.Vijayakumaran

2.The Branch Manager,
United India Insurance Company Limited,
No.443, Periyakulam Road,
Theni District. ... respondents / respondents

**PRAYER:** Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order passed in M.C.O.P.No.47 of 2017 dated 05.07.2018 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Karur.

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| For Appellants | : Mr.V.Sakthivel for M/s.E.K.Kumaresan |
| For R-1 | : No Appearance |
| For R-2 | : Mr.C.Jawahar Ravindran |

**JUDGMENT**
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**R.SUBRAMANIAN,J.**
**AND**
**N.SATHISH KUMAR , J.**

The claimants are on appeal seeking enhancement of compensation.

2. The factum of accident and the liability of the Insurance Company, are not in dispute inasmuch as the Insurance Company has not chosen to challenge the award.

3. Heard Mr.V.Sakthivel for M/s.E.K.Kumaresan, learned counsel appearing for the appellants and Mr.C.Jawahar Ravindran, learned counsel appearing for the second respondent / Insurance Company.

4. While Mr.V.Sakthivel, learned counsel appearing for the appellants, would vehemently contend that despite production of Exs.X1 to X3 and Ex.P10, to demonstrate the income of the deceased, the Tribunal ought not to have fixed the notional income at Rs.9,000/-. He would add that fixing of notional income is on the lower side considering the fact that the deceased is double degree holder. He would further contend that the Tribunal has not taken into account the future prospects.

5. Contending contra, Mr.Jawahar Ravindran, would submit that Ex.X1 to X3 were disbelieved on the ground that they had emerged after the accident. He would also contend that the Tribunal has rightly disbelieved Ex.P10 since the signature of the employee differs and in the salary slip for August, 2012, the wife of the deceased had signed the same as the employee. Though the deceased died on 15.07.2012, it appears from the salary slip for the month of July, 2012, dated 05.08.2012, the entire salary has been paid. Therefore, according to the learned counsel, the Tribunal was justified in rejecting those documents as proof of income.

6. While we see some force in the contention of the learned counsel for the appellants that the Tribunal erred in not taking into account the future prospects, we are unable to countenance any of his other submissions in view of the inherent defects in the documents produced in support of the income.

7. We are therefore, inclined to add future prospects to the notional income fixed by the Tribunal. If future prospects at 25% is added, the monthly income of the deceased would be Rs.11,250/-. After deducting 1/3$^{rd}$ towards his personal expenses, the loss of dependency of the family would be Rs.7,500/- per month. Therefore, the total loss of dependency would be Rs.12,60,000/- ( 7500 X 12 X 14). The Tribunal awarded a sum of Rs.1,00,000/- towards loss of consortium, the same is sustained. The award towards Loss of love and affection, is enhanced to Rs.40,000/- per claimant and the total amount comes to Rs.1,20,000/-. The amount of Rs.5,000/- awarded for transportation is sustained. The amount awarded for funeral expenses is enhanced to Rs.15,000/- and another sum of Rs.15,000/- is awarded towards loss of estate. Thus, the total compensation works out to Rs.15,15,000/-.

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the award dated 05.07.2018 made in

M.C.O.P.No.47 of 2017 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Karur, is enhanced to Rs.15,15,000/-(Rupees Fifteen Lakhs and Fifteen Thousand Only). The award amount is apportioned equally to all the three claimants. No Costs.



9. The Insurance Company shall deposit the enhanced compensation, with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, less the amount if any already deposited, if any, to the credit of M.C.O.P.No.47 of 2017 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Karur, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first appellant/first claimant is permitted to withdraw her share, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in an interest earning fixed deposit, initially for a period of two years with a clause for auto renewal, till they attain majority. The guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank. The proceeds of the fixed deposit shall be paid out equally to the minor claimants on their attaining majority.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Karur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.1198 of 2018
**22.04.2022**

RK(08/06/2022) 3P 4C